

**INTERNAL OPERATING PROCEDURES
OF THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF NORTH CAROLINA**

ARTICLE XI

Hearings

Section 1. The Chairman shall appoint any Commission member or members, or appropriate qualified employee or employees of the Department of Environment and Natural Resources, as hearing officer for any required public hearing to receive comments on regulations or ~~as presiding officer for~~ to preside over any public hearing conducted under any statutes applicable to the Commission.

Section 2. In making hearing officer appointments, the Chairman shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter, and the necessity of having an impartial hearing officer without personal bias.

Section 3. All hearing officers appointed pursuant to this Article shall report their recommendations, along with the record of the hearing, to the full Commission for decision or action, and may ~~move-recommend~~ adoption thereof.

Section 4. The Commission at its regularly scheduled meetings will frequently hear reports and recommendations for the adoption of rules which have been subjected to public notice, comment period and hearing. The Commission will refrain from allowing additional public comment at the meeting, since the matter is not then in public hearing; but the Commission may allow limited public discussion if the circumstances warrant and all positions appear to be adequately represented by those present.

Section 5. With respect to any ~~individual-contested case-quasi-judicial matter~~ pending before the Commission, including ~~requests for declaratory rulings, special orders on consent, remissions, permit appeals-interbasin transfer certificates,~~ and variance petitions, all members of the Commission and hearing officers shall refrain from directly or indirectly communicating outside of the formal hearing ~~procedures-proceedings~~ with any person, party or their representative regarding issues of fact or law pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This section shall not be deemed to limit discussion with State employees whose function is to assist the Commission in fulfilling its duties, and who are not directly involved in investigating or prosecuting the pending matter ~~of such pending matters among or with other Commission members, or to limit discussion with state employees not directly involved in investigating or prosecuting the pending case~~ provided that no factual information not part of the record is transmitted, and such communication does not abrogate each member's responsibility to personally decide the matter.

Section 6. ~~Contested case hearings, or administrative hearings, are governed by Article 3 of Chapter 150B of the General Statutes, and require a Final Decision by the Commission or its NPDES Committee.~~ It is each member's responsibility to review and become familiar with the ~~hearing record and proposals for decision~~ facts and written submissions of the parties prior to the meeting at which ~~the a quasi-judicial~~ decision is to be made. ~~Pursuant to N.C.G.S. §150B-36, a decision shall not be made except upon consideration of the record as a whole or such portion as~~

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~~may be cited by any party to the proceeding and shall be supported by substantial evidence.~~ Parties to the proceeding, but not the general public, will be given the opportunity to address the Commission or ~~its NPDES Committee~~ the standing committee making the final decision, after the recommendation of the staff hearing officer or panel is received. Oral presentations are limited to issues of record, and ~~should will~~ not exceed 15 minutes unless the Chairman or the chairman of the standing committee rules otherwise. After all presentations, discussion and voting shall proceed. A decision shall be made based upon the record as a whole or such portion as may be cited by any party to the proceeding. No Commission member shall investigate the facts independently, but in making his decision shall consider only the evidence presented in the record. Pursuant to N.C.G.S. §143-318.11, executive sessions may be called for discussions of legal questions.

Section 7. Motions filed with the Commission by persons seeking leave to file amicus curiae briefs in pending ~~contested cases quasi-judicial matters~~ shall state the nature of the applicant's interest, the reasons why the brief is desirable, the questions of law to be addressed in the brief and the applicant's position on those questions. The proposed brief may be conditionally filed with the motion for leave. The motion shall be referred to the Chairman who shall rule on the motion. The ~~chairman's~~ Chairman's ruling shall be served upon the applicant, the Department, and parties of record.

Section 8. Motions filed with the Commission by persons seeking leave to intervene in pending proceedings for declaratory rulings, variances or interpretive statements shall be referred, with any response timely filed by the Department or parties, to the Chairman who shall rule on the motion. The Chairman's ruling shall be served upon the applicant, the Department and parties of record.

Section 9. Any written argument, memorandum, or brief submitted to the Commission or any of its Committees pursuant to any section of ~~this~~ Article XI, shall be limited to thirty-five pages if the font used ~~in the brief~~ is a non-proportional type and to 8,750 words if ~~the brief uses~~ proportional type is used.

ARTICLE XII

Remission Requests

Section 1. ~~The Chairman shall designate at least three members of the Committee on Civil Penalty Remissions to meet together when necessary to review the remission requests that were unable to be resolved by the Secretary and the violator and have been delivered to the Committee. The members will conduct a review of the documents comprising each remission request and the Division Director's recommendation before making a recommendation to the Committee on the best manner of handling the individual remission requests when the full Committee meets to make the final decision.~~

Section 2. ~~After reviewing the record documents for each remission request sent to the Committee, the designated members will make a recommendation of one of the following possible actions:~~

- ~~a. that no grounds for remission under N.C.G.S. §143B-282.1 (c) or (d) are shown by the record and the civil penalty should be upheld without further oral presentation before the Committee;~~
- ~~b. that one or more grounds for remission under N.C.G.S. §143B-282.1 (c) or (d) are shown~~

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~~by the record and the civil penalty should be remitted in some amount without further oral presentation to the Committee;~~

~~e. that the Commission Chairman, under the authority of N.C.G.S. §143B-282.1 (a), allow a violator's request for oral presentation before the Committee.~~

Section 3. The Committee on Civil Penalty Remissions will meet as necessary to consider requests for remission and make the final decisions. When the Chairman of the Commission has allowed a violator's request for oral argument, the Committee will hear oral presentations by the violator and the staff of the Department of Environment and Natural Resources. The violator will be notified of the date, time and location of the meeting when his oral argument on the remission request will be heard and the matter decided.

Section 4. By submitting a request for remission of a civil penalty assessed by the Department under N.C.G.S. §143-215.6A (f), the Committee recognizes that the violator has agreed that an evidentiary hearing is unnecessary, that all facts alleged in the assessment by the Department are stipulated, and that the only issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined by the Committee in accordance with N.C.G.S. §143B-282.1 and the Internal Operating Procedures of the Environmental Management Commission. The Secretary's recommendation on the remission request shall be the final agency decision unless it is modified by the Committee through a motion and vote of a majority of the Committee members in attendance. The Committee may order the full penalty be paid, accept the recommendation of the Director or reduce the penalty in accordance with N.C.G.S. §143B-282.1. When a request to make an oral presentation is allowed, parties to the proceeding, but not the general public, will be given the opportunity to address the Committee, after the recommendation of the staff is received. Oral presentations are limited to issues of record, and should not exceed 5 minutes per side unless the Committee ~~Chairman~~ chairman rules otherwise. Pursuant to N.C.G.S. §143-318.11, executive sessions may be called for discussion of legal questions.

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